

ASHER HILL,)
)
Plaintiff,)
)
v.) No. 2:21-cv-00200-JPH-DLP
)
SAMUEL J. BYRD,)
KIM HOBSON,)
RICHARD BROWN,)
I. RANDOLPH,)
)
Defendants.)

The Seventh Circuit Court of Appeals has recently affirmed that if a prisoner deliberately misrepresents his financial status when seeking leave to proceed *in forma pauperis*, "the case must be dismissed." *Reyes v. Fishel*, Nos. 19-1082, 19-1084, 2021 WL 1685905 (7th Cir. April 29, 2021). Moreover, the Prison Litigation Reform Act requires "prisoners to disclose to the court all of their assets and trust fund account records for the six months prior to filing suit." *Id.* at 3. "Section 1915(e)(2)(A) further mandates that 'the court shall dismiss the case at any time if the court determines that ... the allegation of poverty is untrue.'" *Id.* (quoting 28 U.S.C. § 1915(d)(2)(A)). "When making that determination, it is well within a court's discretion to consider the accounting of the prisoner's income and spending over the six months prior to filing." *Id.*

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Carl Smith, counselor, dated April 30, 2021. Dkt. 2-1. This Statement indicates that Mr. Hill has had no deposits and a zero balance the last 6 months. *Id.*

Upon closer examination of the "Carl Smith" form, the Court noticed that the signature was misspelled "Snith" rather than "Smith." *Id.* A clerk of the Court contacted Wabash Valley Correctional Facility and was informed that there is no counselor or case worker there by the name of "Carl Smith."

The Court takes judicial notice of the fact that in another one of plaintiff Hill's cases, he paid the full \$400.00 filing fee on February 24, 2020. *See Hill v. Brown, et al.*, 2:20-cv-094-JRS-DLP. Dkt. 5. After that complaint was dismissed on March 23, 2020, Mr. Hill sought leave to proceed *in forma pauperis* and in support of that motion he attached a Certified Counselors Statement of Inmate Trust Fund Account purportedly filled out by Carl Smith, counselor, dated April 14, 2020. That document indicated that Mr. Hill had a zero current monthly balance and an average monthly deposit and balance the last 6 months of \$50.00. 2:20-cv-094-JRS-DLP; dkt. 17-1. The Court denied Mr. Hill's motion to proceed *in forma pauperis* on appeal in that case not based on financial considerations but because no final appealable order had been issued. *Id.*; dkt. 18. The action was ultimately dismissed for failure to state a claim upon which relief can be granted. *Id.*; dkt. 28. Mr. Hill again sought leave to proceed on appeal *in forma pauperis* and in support of that motion submitted another "Certified Counselors Statement" purportedly signed by "Carl Smith, counselor" dated August 1, 2020. *Id.*; dkt. 33-1. On that form, despite having paid \$400 less than six months earlier, the form reflects a zero balance, zero receipts, and zero average monthly deposits and balance during the last 6 months. *Id.*

Based on these circumstances, the plaintiff's motion to proceed *in forma pauperis*, dkt. [2], is **denied without prejudice** for failure to submit a certified trust fund account statement for the

six-month period preceding the filing of this action on April 30, 2021. He shall have **through June 14, 2021**, to submit the proper trust fund account statement. Failure to do so will result in the dismissal of this action for failure to comply with Court orders.

In addition, Mr. Hill shall have **through June 14, 2021**, to **show cause** why this action should not be dismissed with prejudice as a sanction for deliberately misrepresenting his allegation of poverty and submitting a form purportedly signed by "Carl Smith," who is not actually a case worker at Wabash Valley. Mr. Hill shall provide a phone number for Carl Smith at the facility if he insists that this person is, in fact, his case worker.

SO ORDERED.

Date: 5/20/2021



James Patrick Hanlon
United States District Judge
Southern District of Indiana

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